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**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CRM-M-37427-2022

Date of decision : 14.12.2022

Sheikh Ajaz Ahmed

...Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr. Amandeep Singh Manaise, Advocate and
Ms. Manju Yadav, Advocate for the petitioner.

Mr. Ramdeep Partap Singh, Sr. DAG, Punjab.

VIKAS BAHL, J. (ORAL)

This is the second petition filed under Section 439 of Cr.P.C.
for grant of regular bail to the petitioner in FIR No.88 dated 28.06.2021
registered under Sections 21(c) and 29 of NDPS Act, 1985 at Police
Station Sadar Pathankot, District Pathankot.

Learned counsel for the petitioner has submitted that in the
present case, the petitioner is in custody since 07.07.2021 and
investigation is complete and challan has been presented and there are 21
prosecution witnesses, out of which, none have been examined as yet and
thus, the conclusion of trial is likely to take time and the earlier bail
application of the petitioner was dismissed as withdrawn on 25.04.2022

at that stage and even subsequent to the same, no witness has been examined and the trial has not made any progress. It is further submitted that neither the petitioner was named in the FIR nor any recovery has been effected from him. It is contended that the recovery, in the present case, has been effected from one Amit Sudan which is of commercial quantity. It is further contended that it is the case of the prosecution that the said Amit Sudan had named two persons in his disclosure statement i.e. Attar Chaudhary and Kala Chaudhary and it is further the case of the prosecution that the present petitioner is Kala Chaudhary. It is argued that the petitioner is not known as Kala Chaudhary and even otherwise, other than the disclosure statement of said Amit Sudan, there is no other material to connect the present petitioner with the said offence. It is further argued that neither there are any call details between the petitioner and the said Amit Sudan, nor any recovery has been effected from the present petitioner even after his arrest, nor the petitioner is owner of the vehicle in which the alleged contraband was being transported.

Learned counsel for the petitioner has relied upon the judgment passed by the Hon'ble Supreme Court in **Tofan Singh Vs. State of Tamil Nadu**, reported as **2021(1) RCR (Criminal) 1** to contend that in such like cases if a person has only been proceeded against on the basis of disclosure statement of co-accused and no recovery has been effected from the petitioner, then he should be granted the benefit of bail and statement made by co-accused before the police is inadmissible in evidence.

On the other hand, learned State Counsel has opposed the present petition for grant of regular bail to the petitioner and has submitted that the petitioner is involved in other cases also under the NDPS Act. The recovery in the present case is from Amit Sudan which is of commercial quantity and thus, bar under Section 37 of NDPS Act, would apply.

Learned counsel for the petitioner, in rebuttal to the said argument, has relied upon the judgment of Hon'ble Supreme Court in ***“Maulana Mohd. Amir Rashadi vs. State of U.P. and another”***, reported as ***2012 (2) SCC 382*** to contend that the facts and circumstances of the present case are to be seen and the bail application of the petitioner cannot be rejected solely on the ground that the petitioner is involved in another case. The relevant portion of the said judgment is reproduced hereinbelow:-

“As observed by the High Court, merely on the basis of criminal antecedents, the claim of the second respondent cannot be rejected. In other words, it is the duty of the Court to find out the role of the accused in the case in which he has been charged and other circumstances such as possibility of fleeing away from the jurisdiction of the Court etc.”

This Court has heard learned counsel for the parties and has perused the paper book.

The Hon'ble Supreme Court in ***Tofan Singh's case*** (Supra), had observed as under:-

“152. Thus, to arrive at the conclusion that a confessional statement made before an officer designated

under section 42 or section 53 can be the basis to convict a person under the NDPS Act, without any non obstante clause doing away with section 25 of the Evidence Act, and without any safeguards, would be a direct infringement of the constitutional guarantees contained in Articles 14, 20(3) and 21 of the Constitution of India.”

In the present case, the petitioner is in custody since 07.07.2021 and investigation is complete and challan has been presented and out of 21 prosecution witnesses, none have been examined as yet and thus, the conclusion of trial is likely to take time. The earlier bail application of the petitioner was dismissed as withdrawn on 25.04.2022 at that stage and even subsequent to the same, no witness has been examined and the trial has not made any progress. Neither the petitioner was named in the FIR nor any recovery was effected from him and he is sought to be implicated on the basis of disclosure statement of Amit Sudan. No material other than the disclosure statement has been brought to the notice of this Court which would connect the present petitioner with the alleged offence. There are neither any phone call details between the petitioner and co-accused Amit Sudan, nor the petitioner is stated to be the owner of the car in question.

Keeping in view the abovesaid facts and circumstances and also in view of law laid down in ***Maulana Mohd. Amir Rashadi's case*** (Supra), and in ***Tofan Singh's case*** (Supra), the present petition is allowed and the petitioner is ordered to be released on regular bail on his furnishing bail/surety bonds to the satisfaction of the trial Court/Duty

Magistrate, subject to him not being required in any other case. The petitioner shall also abide by the following conditions:-

1. The petitioner will not tamper with the evidence during the trial.
2. The petitioner will not pressurize/intimidate the prosecution witness(s).
3. The petitioner will appear before the trial Court on the date fixed, unless personal presence is exempted.
4. The petitioner shall not commit an offence similar to the offence of which he is accused, or for commission of which he is suspected.
5. The petitioner shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him/her from disclosing such facts to the Court or to any police officer or tamper with the evidence.

In case of breach of any of the above conditions, the prosecution shall be at liberty to move an application for cancellation of bail before this Court.

Nothing stated above shall be construed as an expression of opinion on the merits of the case and the trial would proceed independently of the observations made in the present case which are only for the purpose of adjudicating the present bail application.

14.12.2022

Pawan

**(VIKAS BAHL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No